

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 DANE R. GILLETTE  
Chief Assistant Attorney General  
3 JULIE L. GARLAND  
Senior Assistant Attorney General  
4 ANYA M. BINSACCA  
Supervising Deputy Attorney General  
5 AMBER N. WIPFLER, State Bar No. 238484  
Deputy Attorney General  
6 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
7 Telephone: (415) 703-5721  
Fax: (415) 703-5843  
8 Email: Amber.Wipfler@doj.ca.gov

9 Attorneys for Respondent Warden B. Curry

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13  
14 **EDWARD KENNEDY,**

15 Petitioner,

16 v.

17 **BEN CURRY, Warden,**

18 Respondent.

C08-1090 JSW

**REPLY TO OPPOSITION TO  
MOTION TO DISMISS;  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

Judge: The Honorable Jeffrey S. White

19 **INTRODUCTION**

20 Petitioner Edward Kennedy is a California state inmate at the Correctional Training Facility,  
21 proceeding pro se in this habeas corpus action. Kennedy, who is currently serving an indeterminate  
22 life sentence for second degree murder, alleged that the Board of Parole Hearings violated due  
23 process in denying him parole. However, in both his initial petition and his opposition to  
24 Respondent Warden Ben Curry's motion to dismiss, Kennedy fails to specify which parole hearing  
25 he is challenging. He similarly fails to provide any specific facts to support the claims made in his  
26 petition. Accordingly, Respondent respectfully requests that the petition be dismissed pursuant to  
27 28 U.S.C. § 2254 and Rules 2 and 4 of the Federal Rules Governing Habeas Cases, on the grounds  
28

1 that Kennedy does not have standing to bring this petition and has not sufficiently pled his claim.

2  
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **ARGUMENT**

5 **KENNEDY'S ALLEGATIONS ARE CONCLUSORY AND**  
6 **NOT SUPPORTED BY A STATEMENT OF SPECIFIC FACTS.**

7 Rule 2 of the Rules Governing Habeas Corpus Cases establishes the pleading  
8 requirements for a federal habeas corpus petition. Subsection (c) requires a petitioner to "state the  
9 facts supporting each ground" for relief, as "conclusory allegations which are not supported by a  
10 statement of specific facts do not warrant habeas relief." *James v. Borg*, 24 F.3d 20, 26 (9th Cir.  
11 1994). Summary dismissal is appropriate where the allegations in the petition are vague or  
12 conclusory. *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990); *see also Wacht v.*  
13 *Cardwell*, 604 F.2d 1245, 1247 (9th Cir. 1979) ("Notice pleading is not sufficient, for the  
14 petition is expected to state facts that point to a real possibility of constitutional error").

15 Here, rather than simply remedy the defect in his pleading and inform this Court which  
16 parole hearing he challenges in his habeas petition, Kennedy instead argues that his lack of legal  
17 sophistication excuses him from the requirement that he state facts to support his claim for  
18 habeas relief. To support this argument, he cites *Davis v. Silva*, which noted that in the context  
19 of presenting a federal claim for purposes of exhaustion, the Ninth Circuit "has held pro se  
20 pleadings to a less stringent standard than briefs by counsel and reads pro se pleadings  
21 generously, 'however inartfully pleaded.'" 511 F.3d 1005, 1009 (9th Cir. 2008), *citing Haines v.*  
22 *Kerner*, 404 U.S. 519, 520 (1972). However, the *Davis* court's holding did not hold that pro se  
23 litigants are exempt from basic pleading requirements. On the contrary, the *Davis* court found  
24 that the petitioner had properly exhausted his claims because he had provided "all the facts  
25 necessary to state a claim for relief." *Davis*, 511 F.3d at 1011 (citations omitted).

26 Moreover, the Ninth Circuit has held that a pro se habeas petitioner's lack of legal  
27 knowledge is not a sufficient defense for failure to meet procedural requirements. For example,  
28 in *Raspberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006), the Ninth Circuit recognized that a

1 pro se petitioner's "lack of legal sophistication" is not a defense to filing a petition beyond the  
2 one-year statute of limitations. The same logic applies here, as Kennedy's alleged lack of legal  
3 knowledge should not excuse him from meeting the basic requirement of stating the facts upon  
4 which relief may be granted.

5 Kennedy claims that his hearings before the Board have been "sham hearings," and that  
6 the Board improperly denied him parole. (Pet. at 6b.) However, he gives no indication as to  
7 what parole hearing he is challenging, nor does he provide any specific facts from which  
8 Respondent could determine what hearing is at issue. As such, his petition should be dismissed  
9 for failure to sufficiently state a claim upon which relief may be granted.

10 **CONCLUSION**

11 Lack of legal sophistication does not excuse Kennedy from the most basic of pleading  
12 requirements—that is, stating sufficient facts to support his claim. As such, the petition for writ  
13 of habeas corpus should be dismissed for failure to sufficiently plead a claim.

14 Dated: August 13, 2008

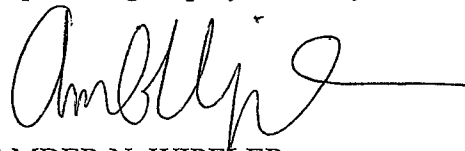
15 Respectfully submitted,

16 EDMUND G. BROWN JR.  
Attorney General of the State of California

17 DANE R. GILLETTE  
Chief Assistant Attorney General

18 JULIE L. GARLAND  
Senior Assistant Attorney General

19 ANYA M. BINSACCA  
20 Supervising Deputy Attorney General

21 

22 AMBER N. WIPFLER  
23 Deputy Attorney General

24 Attorneys for Respondent Warden B. Curry

25 20129642.wpd  
26 SF2008401620

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Kennedy v. Curry**

No.: **C08-1090 JSW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 13, 2008, I served the attached

**REPLY TO OPPOSITION TO MOTION TO DISMISS;  
MEMORANDUM OF POINTS AND AUTHORITIES**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Edward D. Kennedy  
D-30780  
Correctional Training Facility  
P.O. Box 689  
Soledad, CA 93960-0689  
*In Pro Per*  
*D-30780*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 13, 2008, at San Francisco, California.

S. Redd  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature